2001-014-806

webmaster@csa-dc.org on 06/27/2001 07:14:29 AM

To: farcase.2001-014@gsa.gov
cc:

Subject: Reference: Far Case 2001-014

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Wednesday, June 27, 2001

General Services Administration
FAR Secretariat (MVR)
Attn: Ms. Laurie Duarte
1800 F Street NW
Room 4035
Washington, D.C. 20005

Reference: Far Case 2001-014

Dear Ms. Duarte:

I am pleased to submit comments regarding the proposed reconsideration and revocation of
FAR rule on Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings (December 20, FAR Case 1999-010).

The majority of companies doing business with the federal government believe in high ethical performance standards. That said, I do not believe there has been
any indication that contracting officers are doing business with companies that lack the necessary integrity to contract with the federal government.

I strongly support revocation of the December 20 rule. That rule is unwarranted and unworkable. The rule's changes are unnecessary because the protections proffered are already, more appropriately, covered elsewhere in statute and regulation. The rule requires contracting officers to make responsibility determinations on the basis of vague and ill-defined criteria that are outside their normal areas of expertise and training.

And, the rule is a step backward from the previous six years of streamlining initiatives, which were aimed at making the procurement process function more effectively. The requirement for a certification is contrary to congressional direction in the 1996 Clinger-Cohen Act directing the Office of Federal Procurement Policy to eliminate all non-statutory certification requirements imposed on government contractors. And it is contrary to the stated goals of the Bush Administration for the government to utilize greater commercial practices.

Service contractors are already bound by a number of labor laws and regulations that are solely enforceable by the Department of Labor. These laws include:

- The Service Contract Act
- Davis-Bacon Act (enforced by individual agencies)

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Contract Work Hours and Safety Standards Act
Family Medical Leave Act
Fair Labor Standards Act
OSHA
OFCCP (Affirmative Action)
NLRB (National Labor Relations Board)
Americans with Disability Act

Under the December 20 rule, determinations of non-responsibility are authorized by contracting officers who are not trained in the complexities of these labor laws.

The disallowance of costs arising out of activities related to assisting, promoting or detering employee decisions regarding unionization would monumentally expand, rather than simply clarify, the existing procurement laws and regulations related to cost principles and what is allowable or unallowable on government contracts as a normal cost of doing business. A government contract is an expensive and inappropriate vehicle for advancing such an agenda. There are ample existing cost principles dealing with legal and defense costs.

In summary, the December 20 final rule should be withdrawn - it is fundamentally flawed policy and cannot be fixed. Furthermore, it is an unnecessary encumbrance on the acquisition process, and ignores the doctrine of fairness that is so fundamental to government procurement. Finally, it would place a burden on the contracting officer that is beyond that official's ability to implement in an equitable and coherent fashion.

I appreciate the opportunity to respond to the reconsideration and proposed revocation of the December 20 Contractor Responsibility rule - and urges the FAR Council to repeal this unworkable rule.

If you should have any questions regarding this matter, please contact me at (410) 266-1380.

Sincerely,

Wayne R. Hagins